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Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED

FEB 19 2009

In the Matter of)

Ronan Telephone Company)

Request for Waiver and Extension of Time of
Tribal Land Bidding Credit Construction)

Requirement for a Lower 700 MHz Band License)

WT Docket No. 06-231

File No. 0003656733

ORDER**Adopted: February 11, 2009****Released: February 11, 2009**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address the request by Ronan Telephone Company (Ronan) for waiver and extension of time to meet the tribal land bidding credit (TLBC) construction requirement for the Blackfeet Indian Reservation (Blackfeet Reservation) located in Montana (Extension Request).¹ Specifically, Ronan requests a waiver of section 1.2110(f)(3)(vii) of the Commission's rules to allow it an additional year to meet the TLBC construction requirement associated with its Lower 700 MHz Band C-Block license for the Montana RSA 1 market, Call Sign WPZK450.² For the reasons stated below, we grant a waiver of section 1.2110(f)(3)(vii), and provide one additional year for Ronan to meet the TLBC construction requirement, until January 29, 2010.

II. BACKGROUND

2. Ronan is a local exchange carrier located in Ronan, Montana.³ Ronan was the winning bidder in Auction No. 44 for three Lower 700 MHz Band licenses, including the Montana RSA 1 license that is the subject of its Extension Request.⁴ On January 29, 2004, the Wireless Telecommunications Bureau (Bureau) granted Ronan a license for the Montana RSA 1 market, Call Sign WPZK450. As part of its license grant, Ronan received a tribal land bidding credit of \$182,000 (half of the gross winning bid) for the Montana RSA 1 license in exchange for Ronan's agreement to construct and operate within three years of its initial license grant (*i.e.*, January 29, 2007) "a system capable of serving seventy-five (75) percent of the population of the qualifying tribal land (*i.e.*, the Blackfeet Indian Reservation) for which

¹ File No. 0003656733 (filed Nov. 21, 2008).

² The license area encompasses northwestern portions of Montana, including the counties of Lincoln, Sanders, Lake, Flathead, Glacier, Pondera, and Teton. The Blackfeet Indian Reservation lies within Glacier and Pondera Counties.

³ Extension Request at 2.

⁴ See Lower 700 MHz Band Auction Closes, Winning Bidders Announced, *Public Notice*, 22 FCC Rcd 972 (WTB 2004).

the credit was awarded.”⁵

3. On November 29, 2006, Ronan filed a request for waiver to extend for three years the deadline to meet Ronan’s TLBC construction requirement under section 1.2110(f)(3)(vii) of the Commission’s rules. Absent a waiver, Ronan would have been required to file within fifteen days of the third anniversary of its initial license grant a post-construction certification stating that it has constructed and is operating a system capable of serving seventy-five percent of the population of the Blackfeet Reservation.⁶ In addition, pursuant to section 1.2110(f)(3)(viii) of the Commission’s rules, if Ronan had failed to comply with the requirement to submit a timely post-construction certification, it would have been required to repay the tribal land bidding credit amount in its entirety, plus interest, within thirty days of the third anniversary of its initial license grant or its license terminates automatically.⁷ In an Order released on January 26, 2007, the Bureau granted Ronan an additional one year (*i.e.*, until January 29, 2008) to meet its TLBC construction requirement.⁸

4. On November 21, 2008, Ronan filed the Extension Request at issue here, which seeks a waiver of section 1.2110(f)(3)(vii) to allow an additional year to meet the TLBC construction requirement associated with its Lower 700 MHz Band C-Block license for the Montana RSA 1 market.⁹ On December 23, 2008, the Bureau issued a Public Notice seeking comment on Ronan’s Extension Request.¹⁰ On December 22, 2008, Ronan filed comments in support of its extension request.¹¹ On January 7 and 8, 2009 respectively, the Montana Public Service Commission (Montana PSC) and the Blackfeet Tribal Business Council (Blackfeet Council) filed comments in support of the Extension Request.¹²

5. In the *Tribal Lands Order*, the Commission stated “[w]e are willing to consider relaxing our buildout requirements in cases where parties can demonstrate that doing so will expedite deployment of service to tribal lands. We therefore encourage parties to file specific waiver requests if need be, and commit to consider such requests expeditiously.”¹³ In the *Second Tribal Lands Order*, the Commission noted that “there may be conditions, such as technical obstacles, economic factors, or other difficulties that may make it difficult for carriers to satisfy the stricter [tribal lands] construction requirement.

⁵ 47 C.F.R. § 1.2110(f)(3)(vii).

⁶ *Id.*

⁷ 47 C.F.R. § 1.2110(f)(3)(viii).

⁸ See Ronan Telephone Company Request for Waiver and Extension of Time of Tribal Land Bidding Credit Construction Requirement for a Lower 700 MHz Band Licensee, *Order*, WT Docket No. 06-231, 22 FCC Rcd 972 (WTB MD 2007) (*Ronan Order*). Ronan sought, and was granted, a second waiver in 2008. See Ronan Telephone Company Request for Waiver and Extension of Time of Tribal Land Bidding Credit Construction Requirement for a Lower 700 MHz Band Licensee, *Order*, WT Docket No. 06-231, 23 FCC Rcd 845 (WTB MD 2008).

⁹ See generally Extension Request.

¹⁰ See Wireless Telecommunications Bureau Seeks Comment on Ronan Telephone Company Request for An Additional Year to Meet Tribal Lands Bidding Credit Construction Requirement, *Public Notice*, WT Docket No. 06-231, DA 08-2778 (rel. Dec. 23, 2008).

¹¹ See Comments of Ronan Telephone Company (filed Dec. 22, 2008, in WT Docket No. 06-231 (Ronan Comments)).

¹² See Comments of the Blackfeet Tribal Business Council filed on January 8, 2009 in WT Docket No. 06-231 (Blackfeet Council Comments); Comments of the Montana Public Service Commission filed on January 7, 2009 in WT Docket No. 06-231 (Montana PSC Comments).

¹³ Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-266, 15 FCC Rcd 11794, 11809 ¶41 (2000) (*Tribal Lands Order*).

Circumstances may exist on remote tribal lands such as low population density, rough terrain, or other factors that can negatively affect the ability of carriers to provide the requisite coverage to facilities in those areas.”¹⁴ In the *Third Tribal Lands Order*, the Commission advised “that should a carrier be unable to fulfill its construction requirements at the end of three years, it may seek a waiver from the relevant Commission rule.”¹⁵

III. DISCUSSION

6. As described in more detail below, we find that the unique circumstances described by Ronan warrant a waiver of the TLBC construction requirement. A waiver may be granted, pursuant to section 1.925 of the Commission’s rules, if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁶

7. Ronan states that the following issues have contributed to its inability to meet the TLBC construction requirement to date: 1) low population density of the Blackfeet Reservation outside of the town of Browning, Montana;¹⁷ 2) location of many houses on the Blackfeet Reservation on the wind-protected side of hills and at the bottom of ravines;¹⁸ and 3) challenges faced by the Blackfeet Tribe in contributing capital to the project with Ronan.¹⁹ Ronan states that approximately 60 percent of the Blackfeet Reservation’s population of 10,100 is concentrated in and around the townsite of the community of Browning, with the remaining residents dispersed over 2,300 square miles, which equates to a population density of 1.4 persons per square mile.²⁰ Because the population density is so low, Ronan must construct numerous sites to meet the TLBC construction requirement of covering seventy-five percent of the population.²¹ Furthermore, Ronan states that the Blackfeet Reservation’s location in the “down slope wind band” of the Rocky Mountain Front accounts for some of the “strongest winds in North America.”²² As a result of the windy conditions as well as the ravines and rolling prairie that characterize the geography of the Blackfeet Reservation, houses on the Blackfeet Reservation are located on the wind-protected side of hills and at the bottom of ravines. According to Ronan, the locations of the houses are very difficult to reach using wireless technology.²³ Finally, Ronan states that to date the Blackfeet Tribe has not been able to contribute all of the capital it intended to the project, which has delayed expansion of service outside of Browning.²⁴

¹⁴ Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4783 ¶22 (2003) (*Second Tribal Lands Order*).

¹⁵ Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Third Report and Order*, 19 FCC Rcd 17652, 17656 ¶8 (2004) (*Third Tribal Lands Order*).

¹⁶ 47 C.F.R. § 1.925.

¹⁷ Extension Request at 6-8.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 6-7, 10.

²⁰ *Id.* at 8.

²¹ *Id.* at 6-9.

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.* at 6-7, 10.

8. In addition to the transmitter that Ronan previously constructed that serves the town of Browning, Ronan has constructed another transmitter that is capable of serving the 543 people of the small community of East Glacier.²⁵ The East Glacier site raised the total coverage from 59.3 percent to 64.6 percent of the Blackfeet Reservation's population.²⁶ Ronan indicates that it is presently constructing a cell site in the (non-reservation) town of Cut Bank (Seville) that will serve the Blackfeet Reservation, and is in the planning stages for providing service into the St. Mary Valley, which will serve the small communities of St. Mary and Babb, Montana, as well as the Blackfeet Reservation.²⁷ Ronan believes the addition of these new sites will allow it to fulfill its obligation to serve 75 percent of the tribal area for which it was awarded credit.²⁸

9. In this case, we find that an extension of time for Ronan to meet its TLBC construction requirement is warranted. We note that the Commission is responsible for promoting the "development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas."²⁹ Furthermore, Congress directed the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."³⁰ We note that an extension of time is supported by the Blackfeet Council and the Montana PSC.³¹

10. In connection to its rural initiatives, in the *Rural Order*, the Commission established a baseline definition of a "rural area" as those counties (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data.³² The population density of the Blackfeet Reservation is 4.3 persons per square mile.³³ In comparison, over ninety-percent of U.S. counties have a higher population density than the Blackfeet Reservation.³⁴ As previously stated, the Commission has acknowledged that low population density could be a factor that "negatively" affects the ability of a licensee to timely meet its TLBC construction requirement.³⁵

11. In addition to low population density being a potential factor for an extension of time, the Commission also acknowledged that economic factors may be a condition that makes it difficult for carriers to timely satisfy the stricter TLBC construction requirement.³⁶ Ronan notes that backhaul between the existing Browning site and other sites is costly based on the type of infrastructure currently in

²⁵ *Id.* at 7.

²⁶ *Id.*

²⁷ *Id.* at 7-8.

²⁸ *Id.* at 8.

²⁹ 47 U.S.C. § 309(j)(3)(A).

³⁰ 47 U.S.C. § 157(a).

³¹ See generally Blackfeet Council Comments; Montana PSC Comments.

³² Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 02-381, 19 FCC Rcd 19078, 19087 ¶11 (2004) (*Rural Order*).

³³ This density is based on 2000 Census figures. If Browning, the largest community and administrative headquarter for the Blackfeet Nation, were removed from the calculation, the population density drops to below two persons per square mile.

³⁴ *Id.* Based on analysis by Commission staff, the population density of the Blackfeet Reservation outside of Browning is less than two persons per square mile.

³⁵ *Second Tribal Lands Order* at 4783 ¶22.

³⁶ *Id.*

place.³⁷ Furthermore, Ronan asserts that there is currently a "high cost" associated with constructing a system in the Lower 700 MHz Band because of the lack of readily available equipment, which is a result of the band being encumbered by TV broadcast stations.³⁸ We believe an extension to overcome the possible economic hurdles associated with constructing additional sites across an area with an extremely low population density is warranted in this specific instance.

12. We recognize that Ronan has constructed, or will shortly have constructed, sufficient facilities to provide wireless broadband access to nearly seventy percent of the population of an area with low population density and challenging topography. Based on the facts before us, we believe a grant of the requested extension, until January 29, 2010, is in the public interest to allow Ronan to construct the additional sites. We believe that strict application of the TLBC construction requirement in this case, which would result in Ronan's repayment of its TLBC or if the TLBC is not repaid, automatic termination of its license, is not warranted. Instead, we believe the extension will provide enough time for additional construction to occur where at least seventy-five percent of the population of the Blackfeet Reservation will be covered, which furthers the public interest by ensuring prompt delivery of advanced telecommunications capability to the residents located on the rural Blackfeet Reservation. We conclude that a one-year extension is sufficient time in which to complete the construction described by Ronan, and note that, in the absence of additional compelling circumstances, we do not envision granting any further extension requests.

13. Accordingly, IT IS ORDERED that pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, section 1.2110(f)(3)(vii) of the Commission's Rules IS WAIVED to extend the tribal land bidding credit construction deadline for Call Sign WPZK450 until January 29, 2010.

FEDERAL COMMUNICATIONS COMMISSION


Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

³⁷ Extension Request at 9, note 6.

³⁸ *Id.* at 10-11.